STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to consider revisions to implementation of Public Act 299 of 1972; MCL 460.111 *et seq*., as it pertains to the amount of public utility assessments to be paid by regulated entities in the future.	)	Case No. U-18115

At the March 10, 2017 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On July 6, 2016, the Commission opened this docket to consider revisions to the current implementation of Public Act 299 of 1972 (Act 299), MCL 460.111 *et seq*., as it pertains to the amount of public utility assessments to be paid by regulated entities in the future. The order invited each company regulated by the Commission to file a proposal in this docket concerning any suggested changes to the current method used to allocate public utility assessment (PUA) costs. The order directed the Staff of the Commission's Financial Analysis and Audit Division to analyze the proposals, to consult with the other divisions of the Commission, and to make recommendations for the Commission's consideration.

Proposals and comments were filed by representatives from the Telecommunications Association of Michigan (TAM), Michigan Electric Cooperative Association (MECA), Clear Rate

Communications (Clear Rate), AT&T Michigan, Frontier Communications[1] (Frontier), the Michigan Cable Telecommunications Association (MCTA), and FirstEnergy Solutions Corp. Joint comments were filed by the Michigan Electric and Gas Association (MEGA), Consumers Energy Company (Consumers), DTE Electric Company (DTE Electric), and DTE Gas Company (DTE Gas) (collectively, the Energy Providers). The Commission Staff (Staff) filed its report on September 2, 2016 (Staff's report).

After review of these materials, on September 23, 2016, the Commission issued an order commencing a contested case proceeding pursuant to MCL 460.118 (September 23 order). The Commission assigned Administrative Law Judge Mark E. Cummins (ALJ) to the matter, and set a date for a prehearing conference. The Commission also provided direction with respect to notice, intervention, the Staff's participation, the filing of evidence, and the burden of proof; and indicated that it would read the record. September 23 order, pp. 8-11.

A prehearing conference was held before the ALJ on October 21, 2016, where intervention was granted to MECA, DTE Electric, DTE Gas, Consumers, MCTA, Clear Rate, AT&T Michigan, MEGA, TAM, Frontier, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Michigan Gas Utilities Corporation, and DCP Grands Lacs LLC, DCP Saginaw Bay Lateral Michigan Limited Partnership, and Jackson Pipeline Company (collectively, DCP). The Staff also participated.

On November 17, 2016, MECA filed testimony, and on November 18, 2016, direct evidence was filed by Frontier, AT&T Michigan, and the Staff. On December 12, 2016, exhibits were filed by the Energy Providers, and responsive testimony was filed by the Staff. On December 22, 2016,

[1] The business entities that joined in Frontier's comments include Frontier North Inc., Frontier Midstates Inc., Frontier Communications of Michigan, Inc., Frontier Communications Online and Long Distance Inc., and Frontier Communications of America, Inc.

rebuttal testimony was filed by MECA.[2] On January 4, 2017, the Staff filed a motion to strike portions of MECA's testimony. On January 6, 2017, MECA filed a response to the motion to strike.

On January 9, 2017, an evidentiary hearing was held where the pre-filed testimony of five witnesses was bound into the record, and two witnesses were cross-examined. At that hearing, the ALJ granted in part, and denied in part, the Staff's motion to strike. 2 Tr 22-26, 96. The record consists of 209 pages of transcript and 16 exhibits admitted into evidence.

On February 13, 2017, initial briefs were filed by TAM, Clear Rate, AT&T Michigan, Frontier, MECA, MEGA, and the Staff. DCP filed a statement of position. DTE Electric, DTE Gas, and Consumers filed letters indicating their support for the initial brief filed by MEGA. On February 24, 2017, reply briefs were filed by Frontier, AT&T Michigan, MECA, and the Staff. TAM filed a letter indicating support for the replies filed by AT&T Michigan and Frontier.

Positions of the Parties

a. Telecommunications Providers

In its initial brief, TAM begins by noting that the starting point for the allocation of the costs of regulation under Act 299 "is the proportion of each public utility's gross revenues from intrastate operations of the total of gross revenues from intrastate operations from all public utilities subject to the Commission's jurisdiction." TAM's initial brief, pp. 2-3; MCL 460.112. TAM notes that the Commission may modify this method if it finds that the method is not fair and equitable. MCL 460.118. TAM avers that the rationale implicit in the statutory language is that each utility's portion of gross revenues from intrastate operations acts as a proxy for the amount of

[2] On January 3, 2017, MECA witness Brian Burns filed testimony adopting all of the pre-filed direct and rebuttal testimony of MECA witness Tony Anderson.

regulatory activity required from the Commission for that utility. TAM notes that Act 299 was passed in 1972, and argues that the regulatory workload of the Commission has changed considerably since that time.

TAM posits that the regulatory workload of the Commission has declined in the aftermath of passage of the Michigan Telecommunications Act, Act 179 of 1991 (MTA), MCL 484.2101 *et seq*., and the near complete repeal of the Telephone Companies as Common Carriers Act, 1913 PA 206, MCL 484.101 *et seq*. TAM also avers that the reduction in the nature and extent of telecommunications regulation accelerated dramatically as a result of successive MTA rewrites in 1995, 2000, 2005, 2008, and 2011. Moreover, TAM argues that the extent of Commission oversight and regulation of intrastate operations of telecommunication providers has been further reduced by various orders of the Federal Communications Commission that have preempted state authority over intrastate operations. TAM argues that, due to these changes, the requirement that the PUA for telecommunications providers be based solely on gross revenues from intrastate operations is no longer fair and equitable, and based upon the uncontested testimony of the witnesses for AT&T Michigan and Frontier, the portion of public utility assessments allocated to telecommunication providers should be reduced by 50%.

TAM notes the many changes to telecommunications regulation since 1972, as testified to by AT&T Michigan's witness, and the declining number of actions filed with the Commission, as testified to by Frontier's witness. 2 Tr 45-60, 32-37. TAM also notes that 2009 PA 182, which created the Michigan Intrastate Switched Toll Access Restructuring Mechanism (ARM), provides for an additional assessment on telecommunications providers based on intrastate gross revenues to cover the administrative cost of implementing the ARM. TAM argues that, in contrast, electric and natural gas utilities remain subject to pervasive cost of service and rate of return based

regulation, as evidenced in 2016 PA 341 and 342 (Acts 341 and 342), which allocate additional funds and employees to the Commission to implement new electric and gas regulation.

Clear Rate notes the unrebutted evidence of the witnesses provided by AT&T Michigan and Frontier regarding the decrease in regulatory activity with respect to telecommunications. Clear Rate argues that it is no longer appropriate to divide the entirety of the collective amount of utility regulation expenses among all regulated entities on an equal basis based on gross revenues. Clear Rate supports the proposed 50% reduction to the PUA of telecommunications providers.

AT&T Michigan advocates the 50% reduction and points out that no participant in the case rebutted the company's evidence or objected to the proposed reduction. AT&T Michigan notes that the current allocation method was created over 45 years ago at a time when telecommunications providers were subject to pervasive economic regulation. However, given that competition has effectively replaced regulation, and technologies such as texting, Skype, emails, instant messaging, and social applications like Facebook and Twitter have changed how people communicate, AT&T Michigan believes a 50% reduction to the PUA is appropriate. AT&T Michigan provided evidence showing an 83.9% decrease in plain old telephone service (POTS) lines provided to residential switched access customers by Michigan's incumbent local exchange carriers (ILECs) between 1999 and 2014, increasing to a projected 92.8% by December 2016. Exhibit AT&T-1.

AT&T Michigan argues that the electric and gas industries remain heavily regulated, while telecommunications has become intensely competitive. AT&T Michigan enumerates 10 traditional Commission oversight functions involving the telecommunications industry (as it existed in 1973) which were subsequently eliminated by the Michigan Legislature, including: (1) cost cases related to retail rate regulation; (2) price floors and imputation requirements; (3) tariffs;

(4) service quality and billing rules; (5) access rates; (6) the primary basic local exchange service package; (7) affiliate transaction oversight; (8) annual reporting obligations; (9) toll service and local calling area requirements; and (10) the requirement to publish white pages. Further, AT&T Michigan asserts that the Commission's surviving areas of regulatory authority – approval of interconnection agreements (ICAs), adjudicating formal and informal complaints, customer migration, slamming and cramming, lifeline, universal service, relay services for the hearing impaired, number assignments, 9-1-1 services, and multi-line rules – do not give rise to many docketed proceedings. AT&T Michigan's initial brief, p. 8; 2 Tr 52-54. AT&T Michigan points out that its intrastate revenues are predominantly retail, and maintains that there is no longer a "rational connection between the size of its intrastate revenues and the resources the Commission devotes to its oversight of the telecommunications industry." AT&T Michigan's initial brief, p. 9.

AT&T Michigan also contends that the ARM permits the Commission to recover its administrative costs to fund the section within the Telecommunications Division that is responsible for performing the ARM functions. According to AT&T Michigan, the Commission recovered administrative costs totaling $521,618 during 2015 from the ARM fund for these activities. 2 Tr 55.

AT&T Michigan posits that providers would continue to report intrastate revenues as they currently do, but that the Commission should reduce the PUA by 50% as it currently does for electric cooperatives based on the reduced regulatory burden. AT&T Michigan contends that the Commission's workload with regard to the regulation of electric and gas utilities has only increased and continues to increase as a result of Acts 341 and 342, and 2008 PA 295, and notes that five states have reduced the regulatory fees assessed to telecommunications providers. AT&T Michigan supports the 50% reduction as a fair and equitable recognition of the well-established

utility principle of cost-causation that is meant to allocate costs to those who cause them.

Frontier also supports a 50% reduction in the PUA for telecommunications providers, noting the sea change in this industry since 1972. Frontier argues that energy utilities continue to be highly regulated and telecommunications utilities are highly deregulated. Frontier provided evidence showing a 31% decrease in the number of docketed telecommunications cases between 2011 and late 2016, and argues that the complexity of the cases has decreased as well. Frontier points out that 41% of these dockets involve mutually agreed-upon interconnection agreements (ICAs), and that even the number of ICAs has decreased by 42% over this period. 2 Tr 34. Frontier states that licensing dockets have also decreased by 19% over the review period, and notes that cellular and VoIP service are not regulated or licensed by the Commission. Frontier states that the remaining, more complex cases have also decreased over the six-year review period by 64%. Exhibit FC-1. Frontier notes that four states have reduced the PUA of telecommunications providers. Frontier proposes that providers would continue to report gross intrastate revenues, but the PUA would be reduced by 50%, noting that no party opposed the idea.

In reply to the telecommunications providers, the Staff agrees telecommunications related workload has decreased in recent years, and states that if the Commission approves the providers' request, the Staff "recommends that the Commission use the same PUA allocation method that it currently uses for member-regulated electric cooperatives." Staff's replies, p. 3.[3]

[3] In its replies, Frontier argues that the Staff should not be allowed to file a reply brief addressing the telecommunications issues, because the Staff did not present testimony or file an initial brief on these issues. The Commission has considered the Staff's reply because it responds to the arguments made in initial briefs.

b. Energy Utilities

MECA points out that the Commission's regulation of rural electric cooperatives has been greatly diminished due to passage of the Electric Cooperative Member-Regulation Act, 2008 PA 167 (Act 167), MCL 460.31 *et seq.*, and the fact that all but one of the electric cooperatives have switched to member-regulation. MECA argues that a more fair and equitable system is necessary to reflect the actual regulatory burden that member regulated cooperatives (MRCs) impose. MECA argues that MRCs are now more like municipal utilities, and notes that those utilities are exempt from the PUA.

MECA argues that the best way to determine a fair and equitable PUA is to monitor the amount of time and resources spent by the Staff on MRC matters during a year, in comparison to all other matters, and divide the regulatory burden accordingly; but MECA notes that this type of empirical evidence is not available to the Commission. Thus, MECA proposes four possible approaches for MRCs: (1) a $50 per year PUA (the minimum allowable under MCL 460.112); (2) a $10,000 filing fee applicable to any MRC filing a case before the Commission; (3) "monitor time spent on each case and assess all utilities based on the actual time spent;" or (4) such other amount as the Commission deems fair and reasonable in light of the decreased workload associated with the results of Act 167. MECA's initial brief, pp. 2, 14.

MECA contends that, though the modified gross revenue approach by which the MRCs pay a PUA based on only 50% of their gross revenues is helpful, there is no longer any reason that the PUA should be tied to MRC revenues. *See,* June 11, 2011 order in Case No. U-16552. MECA maintains that the Commission resources related to MRC regulation are no longer related to the level of revenues. 2 Tr 85-86. MECA argues that, while the Staff's report shows that MRCs are paying about 2% of the entire PUA, it is not possible that 2% of Commission resources are being

spent on regulating MRCs. MECA notes that the Commission had only six cases involving MRCs in 2015-2016, and most of them involved a transition to member regulation. 2 Tr 87-88.

MECA concedes that the Commission still exerts regulatory jurisdiction over MRCs with respect to safety, interconnection, Code of Conduct, choice, and line extension issues, but argues that this jurisdiction is rarely exercised, and when it is, the matters are minor. MECA avers that the modified PUA simply has no rational relationship to the regulatory burden that MRCs create for the Commission, and that there is no record evidence supporting the existing amount. MECA contends that this lack of a relationship renders the PUA on MRCs a tax, designed to raise revenue, in violation of the Michigan Constitution. MECA asserts that the MRCs are all nonprofit entities, and they are being forced to subsidize the rate regulated utilities. In its reply brief, MECA reiterates that MRCs "should pay for all work necessary to regulate MRCs . . .[but] there is no correlation between the cost of regulating MRCs and the 50% formula." MECA's reply brief, p. 3.

MEGA notes that the Energy Providers jointly sponsored four exhibits in this matter (though not testimony), labeled Exhibits EP-1 through EP-4. MEGA supports the Staff's proposed changes to oil and gas fee schedules, but opposes MECA's request for a $50 PUA on grounds that the Commission still regulates the MRCs with respect to non-rate matters. MEGA takes no stand on the telecommunications providers' proposal, but notes that they are subject to a reduced degree of regulation.

Referring to Exhibit EP-1, MEGA notes that all energy utilities combined accounted for 91.4% of the total PUA, and all telecommunications providers accounted for 8.6%, in state fiscal year 2015-2016. MEGA argues that, "in the absence of evidence regarding the degree of MPSC resources devoted to that sector," it is not possible to determine on the record whether the telecommunications sector is paying more or less than its fair share of regulatory expense.

MEGA's initial brief, p. 13. Nor is it clear from the evidence, MEGA argues, whether the 2% paid by MRCs is reasonable. In any case, MEGA contends, it is important to remember that the PUA supports not just contested proceedings, but also the overhead and ancillary costs of the Commission, such as administrative and general costs, and information technology costs. MEGA notes that the Commission lacks an internal time tracking system that would facilitate this review of the fairness of the PUA. "At best, the Commission is asked to consider making approximate adjustments based on a limited record." MEGA's initial brief, p. 16.

DCP submitted a statement of position indicating that it supports the fixed application filing fee structure proposed by the Staff.

AT&T Michigan replies to MEGA, arguing that, in the absence of evidence one way or the other, intrastate revenues are no longer a good proxy for the regulatory burden imposed by telecommunications, and it is no longer fair or equitable to continue to assess these providers "based on a dollar-for-dollar comparison with other regulated industries." AT&T Michigan's replies, p. 3. Frontier makes the same point in its reply.

The Staff replies to MECA, noting that MECA has not pointed out any subsequent statutory or other change since the 50% reduction that would justify another reduction, and has provided no record evidence in support of the $10,000 filing fee notion. The Staff argues that much regulatory work takes place outside of contested cases.

c. The Commission Staff

The Staff provided testimony and exhibits recommending adjustments to the fee schedule for pipeline applications, to eliminate outdated fees and to increase certain fees for natural gas producers and pipeline operators, and for common carrier petroleum pipeline operators. 2 Tr 67-76; Exhibits S-1 through S-6.

The Staff points out that Michigan continues to rate regulate traditional cooperatives, and argues that MECA has provided no empirical support for any of its alternative PUA proposals for MRCs. The Staff notes that the June 16, 2011 order in Case No. U-16552 cut the PUA in half for MRCs, and no other subsequent statutory changes have occurred such that another reduction is necessary. The Staff argues that MRCs are not like municipal utilities, because the Commission continues to be responsible for MRC matters involving safety, interconnection, Code of Conduct, choice, service quality, distribution performance, and the service area (line extensions). 2 Tr 190-191; MCL 460.36(2). MRCs are also required to regularly file information with the Commission, including audited financial statements. MCL 460.37(3). The Staff maintains that the modified gross revenue approach already takes account of the Commission's reduced burden resulting from Act 167.

Discussion

MCL 460.118 provides:

> The commission may exempt a public utility from this act, if, after notice and hearing, it determines that gross revenues derived from intrastate operations is not a fair or equitable basis for assessing the costs of regulating that public utility and prescribes a fair and equitable manner for assessing such costs of regulation.

Therefore, in the September 23 order, the Commission directed that a contested case proceeding be conducted. The Commission may now make a decision on the basis of the record and the law.

As stated above, the Staff provided testimony and exhibits recommending adjustments to the fee schedule for pipeline applications, to eliminate outdated fees and to increase certain fees for natural gas producers and pipeline operators, and for common carrier petroleum pipeline operators. 2 Tr 67-76; Exhibits S-1 through S-6. All energy utilities participating in this contested case supported the Staff's proposals, and no party opposed them. The Commission finds that the

Staff's recommended changes to the application process and fees should be adopted. *See,* Exhibit S-3. The Staff's evidence is incontrovertible. These changes will bring a much-needed update to the fee structure and will mitigate any concern that other regulated sectors are subsidizing gas producers and pipeline operators.

The Commission is not persuaded by MECA's arguments regarding MRCs. The June 16, 2011 order in Case No. U-16552, p. 3, approved a settlement agreement whereby the MRCs' PUAs are "based on 50% of their respective gross revenue for the preceding calendar year derived from intrastate operations." This formula was arrived at via settlement between the Staff and the MRCs subsequent to the passage of Act 167, and nothing of note has changed with respect to MRCs since that order was issued. As MECA knows, the Commission continues to bear significant regulatory responsibilities with respect to MRCs under MCL 460.36(2), which states:

> [T]he commission shall retain jurisdiction and control over all member-regulated cooperatives for matters involving safety, interconnection, code of conduct including, but not limited to, all relationships between a member-regulated cooperative and an affiliated alternative electric supplier, customer choice including, but not limited to, the ability of customers to elect service from an alternative electric supplier under 1939 PA 3, MCL 460.1 to 460.10cc, and the member-regulated cooperative's rates, terms, and conditions of service for customers electing service from an alternative electric supplier, service area, distribution performance standards, and quality of service, including interpretation of applicable commission rules and resolution of complaints and disputes.

These are not insignificant duties, and the Commission finds that the current 50% reduction represents a fair and equitable assessment of the cost of regulating the MRCs.

The Commission is, however, persuaded that the telecommunications providers should see a reduction in their PUA consistent with the reduction afforded to MRCs. As the Commission indicated in the July 6, 2016 order, pp. 4-5, the regulation of the telecommunications industry has indeed changed dramatically in the 45 years since passage of Act 299. Like the MRCs, telecommunications providers are no longer subject to rate regulation – a Commission activity that

devours significant resources. However, as with MRCs, telecommunications regulation continues to encompass significant duties, including licensing, 2-1-1, 9-1-1, the Video Franchise Act, the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, universal service and lifeline, ICAs, adjudicating formal and informal disputes (including provider-to-provider disputes), slamming and cramming, relay services, and all of the areas delegated under federal law. The telecommunications providers have requested a reduction in line with the 50% reduction authorized for the MRCs, and the Commission agrees, for all of the reasons outlined by the providers. 2 Tr 32-37, 45-60. While several parties aver that the use of gross revenues derived from intrastate operations should be abandoned completely, the Commission finds that gross revenue, as adopted by the Michigan Legislature in MCL 460.112, continues to provide a reasonable starting point for the amount of the PUA. However, under MCL 460.118, the Commission recognizes that the regulatory burden associated with different industries differs considerably, and it is reasonable to take these differences into account when determining a fair and equitable assessment.

THEREFORE, IT IS ORDERED that:

A. The public utility assessment of telecommunications providers regulated by the Commission shall be based on 50% of their respective gross revenues for the preceding calendar year derived from intrastate operations, commencing with the revenues reported during 2017.

B. The revised fee schedule for pipeline applications, attached hereto as Attachment A, is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of March 10, 2017.

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Kavita Kale, Executive Secretary

ATTACHMENT A

Michigan Public Service Commission
Fee Schedule (Proposed)
Required by Sec. 9, Act 299, P.A. 1972

		Pipelines		Other	
		Natural Gas Act 9, PA 1929	Petroleum Act 16, PA 1929	Misc Act 9, PA 1929	Order D-2883
1	Act 9 & Act 16 Pipelines: Base fees				
2	~~<25 miles~~	~~$100~~	~~$100~~	-	-
3	ex-parte	$1,000	$2,000	-	-
4	contested case	$5,000	$10,000	-	-
5	Act 9 & Act 16 Pipelines: Additional fees				
6	~~Additional pipeline in same area~~	~~$75~~	~~$75~~	-	-
7	~~Additional 25 miles~~	~~$50~~	~~$50~~	-	-
8	Hearing Reporting costs including one copy of transcript for MPSC files	Yes	~~No~~ Yes	-	-
9	Miscellaneous Act 9 filings and Additional fees				
10	~~Gas Purchase price revisions~~	-	-	~~$100~~	-
11	Formal complaints	-	-	~~$100~~ $500	-
12	Reqeusts for Exceptions to Standard Rules	-	-	~~$100~~ $1000	-
13	Hearing reporting costs including one copy of transcript for MPSC files	-	-	Yes	-
14	Fees associated with the Rules for Production and Transmission of Natural Gas (D-2883)				
15	Standard Well Connection Permits	-	-	-	~~$100~~ $500
16	Temporary Allowable	-	-	-	~~$100~~ $500
17	~~Filing a Gas Purchase Contract~~	-	-	-	~~$100~~
18	~~Initial Gas Well Testing (observed)~~	-	-	-	~~$100~~
19	Gas Well Retesting	-	-	-	~~$100~~ $500